Supreme Court, U. S.
FILED
OCT 14 1980
MICHAEL RODAK, JR., CLERK

No. 80-258

In the Supreme Court of the United States

OCTOBER TERM, 1980

ABBOTT SEKAQUAPTEWA, Chairman of the Hopi Tribal Council of the Hopi Indian Tribe, for and on behalf of the Hopi Indian Tribe and all villages, clans, and individual members of the Hopi Tribe,

Petitioner,

v.

PETER MacDONALD, Chairman of the Navajo Tribal Council of the Navajo Indian Tribe, for and on behalf of the Navajo Indian Tribe and all villages, clans, and individual members of the Navajo Tribe,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

GEORGE J. ROMNEY, Counsel of Record
SCOTT C. PUGSLEY
BOYDEN, KENNEDY & ROMNEY
1000 Kennecott Building
10 East South Temple
Salt Lake City, Utah 84133
Telephone: (801) 521-0800
Counsel for Petitioner

TABLE OF AUTHORITIES

CASES:

Healing v. Jones, 210 F.Supp. 125 (D. Ariz. 1962), *aff'd*, *Jones v. Healing*, 373 U.S. 758 (1963) (per curiam) 3

STATUTES:

Act of June 14, 1934, 48 Stat. 960 (the "1934 Act") 2, 3

Act of December 22, 1974, Pub.L.93-531, 88 Stat. 1712, 25 U.S.C. § 640d *et seq.* (the "1974 Act") 2, 3

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The Navajo respondent's Brief in Opposition concedes the critical factor which makes review by this Court appropriate.

At page 12 of the Brief in Opposition, the Navajo concede that efforts to limit the Hopi Tribe's area of

use in the 1934 Reservation were "thwarted" by the Hopi Tribe "during the legisative efforts leading to the 1934 Act." The Navajo then assert that the Act of December 22, 1974, 25 U.S.C. § 640d, "has authorized the drawing of such a line." This admission brings into sharp focus the error committed by the courts below. Since the 1934 Act did not legislate a limiting boundary, it is clear error for the courts below to have in effect drawn such a boundary line by limiting the Hopi interest to what the Hopis were using, occupying, and possessing on June 14, 1934. Only after the extent and nature of the interests of the two tribes are determined in accordance with the 1934 Act does the 1974 Act provide for the drawing of a line, and then only to partition "[a]ny lands in which the . . . tribes . . . are determined to have a joint or undivided interest." Section 640d-7(b). The 1974 Act does *not* authorize the drawing of a line in the process of interpreting the 1934 Act. The 1974 Act directs the court to determine the interests of the Hopi and Navajo Tribes on the basis of the grant in the 1934 Act. Section 640d-7(a).

Because the 1934 Act did not divide the tribal interests, all the lands in issue are necessarily "lands in which the . . . tribes . . . have a joint or undivided interest," and all such lands, not merely those utilized by the Hopis in 1934, are subject to partition under the 1974 Act. The undivided interest of the Hopi Tribe in the lands in issue should now be recognized so that the District Court can hereafter partition those lands between the two tribes, not on the basis of a "thwarted,"

non-existent boundary line in 1934, but rather "on the basis of fairness and equity" as provided in the 1974 Act.

The Navajo brief in opposition further admits in footnote 10 "that if any 'other Indians' obtained rights under the 1934 Act, their rights were 'immediate'." As set forth in the petition, the Hopis, as the "other Indians," did obtain rights under the 1934 Act. Since no limitation was included in the 1934 Act, the Hopis obtained a vested interest in and a right to use and occupy the entire 1934 Reservation lands in issue. Such interest and right arose by the self-operating effect of the 1934 Act. The court in *Healing v. Jones*, 210 F.Supp. 125 (D.Ariz. 1962), *aff'd per curiam*, 373 U.S. 758 (1963) held that where the Hopi and Navajo Tribes had co-existing interests, such interests were "joint, undivided, and equal."[1] It must therefore follow that the interest of the Hopi Tribe in the lands in issue is joint, undivided, and equal with that of the Navajo Tribe.

These errors committed by the courts below effect the ownership interests of the Hopi Tribe in over 7 million acres of Indian reservation lands, and will critically effect the future course of this litigation to separate the tribal interests. Review should be granted to determine these questions which will substantially impact the residency rights of over 80,000 Indian people living in the area in question.

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[1] **Healing v. Jones**, 210 F.Supp. at 189.

Respectfully submitted,

George J. Romney, Counsel of Record
Scott C. Pugsley
Attorneys for the Petitioner

BOYDEN, KENNEDY &
ROMNEY
1000 Kennecott Building
10 East South Temple
Salt Lake City, Utah 84133

(801) 521-0800

October 9, 1980

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265